

## § 543.702

## 31 CFR Ch. V (7–1–11 Edition)

of any license, order, regulation, or prohibition issued under IEEPA.

NOTE TO PARAGRAPH (a)(1) OF § 543.701: As of the date of publication in the FEDERAL REGISTER of the final rule adding this part to 31 CFR chapter V (April 13, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of \$250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (“UNPA”), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than \$10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1),(3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

### § 543.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency’s intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to

submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets

Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

#### § 543.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a written Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter.

The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

#### § 543.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.